



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-371-9500, fax: 617-723-5851



SUFFOLK, ss

**COMMISSION ADJUDICATORY
DOCKET NO. 07-0009**

**IN THE MATTER
OF
RICHARD BRETSCHNEIDER**

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Richard Bretschneider pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On May 11, 2006, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Bretschneider. The Commission concluded its inquiry and, on October 11, 2006, found reasonable cause to believe that Bretschneider violated G.L. c. 268A, §§23(b)(2) and 23(b)(3).

The Commission and Bretschneider now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Bretschneider has been the Nantucket County Sheriff since his initial election in 1999 and re-election in 2004. Among his official duties, Bretschneider is responsible for serving eviction notices and other forms of civil process on residents of Nantucket County. By statute, the Nantucket County sheriff is allowed to keep the process service fees as a part of his compensation.

2. From 1994 to 2004, a small parcel of residential property (the "Property") within Bretschneider's jurisdiction was jointly owned by 10 cousins. One of these cousins ("the Cousin") occupied the house on the Property, with her five children and grandchildren, from 1998 to 2004.

3. Beginning in or about 2003, on numerous occasions not involving any official business, Bretschneider approached the Cousin who occupied the house and asked if she would be willing to sell her interest in the Property to him. She refused each of Bretschneider's requests.

4. In 2004, the Cousin relocated to another residence, but maintained ownership of her share of the Property. Soon thereafter, she fell several months behind in her rent at her new residence and began to receive overdue rent warnings from her landlord.

5. On May 13, 2005, Bretschneider in his official sheriff's uniform drove his Sheriff's Department vehicle to the Cousin's residence and personally served her with a 14-day Notice to Quit the premises. While serving the notice, Bretschneider suggested, as he had in the past, that she sell her interest in the property to him, saying, "This might be a good time to sell." She refused.

6. The duties of a sheriff in an eviction include in addition to serving the notice to quit, the following: If the tenant fails to leave the premises within the 14 days set described in the notice to quit, the landlord may bring a summary process action. If the court finds in favor of the landlord, the landlord will obtain an execution for possession, which may be served by the sheriff. The sheriff then posts a 48-hour notice on the tenant's door and if the tenant still fails to move, the sheriff physically removes the tenant. As part of that process, after the 48-hour notice elapses, the sheriff will place any property remaining on the premises at a public warehouse selected in a manner calculated to ensure that the personal property will be stored within a reasonable distance of the premises. See generally, G.L. c. 239, § 3.

7. Over the following several months, the Cousin continued to experience financial distress and became concerned with paying her past due rent obligations. On November 1, 2005, she sold her interest in the property to Bretschneider.

8. Bretschneider did not make a disclosure of his negotiations for the purchase of the Property before serving the Notice to Quit.

Conclusions of Law

9. As the Nantucket County Sheriff, Bretschneider is a county employee as that term is defined in G.L. c. 268A § 1(d), and is subject to the conflict of interest law.

Section 23(b)(2)

10. Section 23(b)(2) of G.L. c. 268A prohibits a public employee from, knowingly or with reason to know, using or attempting to use his official position to obtain for himself or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

11. The Commission has consistently held that §23(b)(2) prohibits public employees, in both their public and private capacities, from soliciting anything of substantial value from persons within their regulatory jurisdiction for a non-governmental purpose, unless the solicitation is specifically authorized by law. The Commission views such solicitations to be "inherently exploitative" or "inherently coercive". See *generally* EC-COI-93-6.

12. The opportunity to purchase private property is a privilege.

13. Bretschneider attempted to obtain the opportunity to purchase the Property in the course of his official duties.

14. The privilege was unwarranted as Bretschneider attempted to facilitate his private purchase of the Property by pursuing the sale in the course of his official business with the Cousin. This was particularly the case where the official business dealings involved Bretschneider arriving in an official vehicle in uniform and serving papers that began the eviction process. This was an inherently exploitable situation, especially where Bretschneider as sheriff might likely subsequently be in a position of having to decide how and when to physically remove the Cousin, and where to store any personal belongings the Cousin might leave behind.

15. Bretschneider knew or had reason to know that he was attempting to use his official position to facilitate his purchase of the Property. This was so even though he had previously privately expressed such an interest to the Cousin on numerous occasions. He knew that the Cousin would be particularly vulnerable because she was in financially difficult circumstances facing eviction.

16. Under the circumstances Bretschneider's solicitation constituted an attempt to use his official position to secure an unwarranted privilege of substantial value because the Cousin was more likely to sell based on the inherently exploitable nature of the circumstances [or based on the request having taken place in conjunction with Bretschneider's serving the eviction notice].

17. Accordingly, Bretschneider violated § 23(b)(2) by, knowingly or with reason to know, attempting to use his official position to secure for himself an unwarranted privilege of substantial value not properly available to similarly situated individuals.

Section 23(b)(3)

18. Section 23(b)(3) of G.L. c. 268A prohibits a public employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the facts, to conclude that a person may improperly influence or unduly enjoy the public employee's favor in the performance of his official duties. This provision of the conflict of interest law allows public employees to act on matters, even if doing so would create the appearance of a conflict, if they properly disclose the facts and circumstances surrounding the apparent conflict prior to taking action.

19. By serving the notice to quit on the Cousin, Bretschneider acted officially as sheriff.

20. When he so acted, Bretschneider knew that he had a past and present private significant relationship with the recipient of that notice: he had on several occasions asked her to sell him the Property, and he in fact again asked her to sell the property in the course of serving her with the notice to quit.

21. By suggesting while serving the notice to quit that the Cousin sell her interest in the Property, Bretschneider acted in a manner which would cause a reasonable person, knowing all the facts, to conclude that the financially distressed Cousin could improperly influence Bretschneider's actions related to the pending eviction by agreeing to his proposal to sell her interest in the Property.

22. Therefore, Bretschneider knew or had reason to know that he was acting in a manner which would cause a reasonable person, knowing all the relevant facts, to conclude that the financially distressed cousin could improperly influence him in the performance of his official duties.

23. This appearance of conflict was exacerbated by Bretschneider's suggesting in the course of his serving the notice, that this would be a good time for the Cousin to sell the Property to him.

Resolution

In view of the foregoing violations of G.L. c. 268A by Bretschneider, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Bretschneider:

- (1) that Bretschneider pay to the Commission the sum of \$1,500.00 as a civil penalty for violating G.L. c. 268A, §§23(b)(2) & §23(b)(3);

- (2) that Bretschneider waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: March 27, 2007